



JOHN PRAT, Esq; Appellant.

William Hopkins, Benjamin  
Midford, Henry Talbot, and } Respondents.  
Joseph Farmer,

## The Appellant's Case.

The Bishop's  
Lease to the  
Appellant,  
25th of May,  
1719.



THE late Right Reverend George Bishop of Bath and Wells, by Indenture of Lease dated the 25th of May, 1719. under his Episcopal Seal, demised to the Appellant, the Rectory and Parsonage of St. John Baptist in Glaston in the County of Somerset, together with Three Chappels therein mentioned, and all Manner of Tythes, Oblations, and Profits whatsoever, to the said Rectory and Chappels annexed or appertaining: To hold for the Term of Three Lives therein named, under the yearly Rents and Covenants therein contained, by virtue of which Lease, the Appellant became lawfully intitled to all Manner of Tythes arising within the Parish of St. John Baptist, and the tytheable Places thereof, or some Satisfaction in lieu thereof.

THAT there were certain Commons or Tracts of Land lying within the said Parish, called COMMON MOOR, BLACK ACRE, and SOUTH MOOR, alias ALDERMOOR, which Commons being waste and unmanured, were of little Benefit to the several Owners and Proprietors thereof.

Agreement  
of Proprietors  
to Enclose  
the Commons.

THE OWNERS and PROPRIETORS entered into an AGREEMENT, to make Partition of, and enclose the said Commons or Moors, to be holden to each Proprietor and his Heirs in severalty, and to be allotted and apportioned, according to the respective Number of Commons and Shares, which each Proprietor had in all or any of the said Commons; and that each of them would accept and take such Proportion therein as should be set forth, and enclose, fence, and hedge in their Shares and Dividends so to be allotted in severalty, as Parts of their respective Estates, **in Right of which** such Allotments and Dividends should be made; and that such Shares and Proportions should be allotted and established by Authority of Parliament.

In October,  
1721, Petition  
on to the  
Lords in  
Parliament.

THAT for the effectual compleating so beneficial an Undertaking, sometime in the Month of October, 1721. a Petition was presented to the Lords Spiritual and Temporal in Parliament, on Behalf of the Owners and Proprietors of the said Commons, for Leave to bring in a Bill for enclosing the said Commons, which their Lordships granted, and thereupon a Bill was accordingly prepared and brought in for the Purposes before mentioned: But it being apprehended, that some Questions might arise touching the Tythes of the said Commons within the said Parish, after the Inclosure thereof; and there being nothing exprest in the Bill



faid Bill ascertaining the same, nor any Manner of Provision made for the Curate of the faid Parish, whose former Maintenance and Provision was very mean and insufficient; the Petitioners or their Agents were ordered by their Lordships, to give Notice to the faid Bishop, (who was at that Time in his Diocess) and to the Appellant his Lessee, which was accordingly done; and the Appellant was heard before the Lords of the Committee, in Behalf of the faid Bishop, and his own Right and Title to the faid Tythes, in Opposition to the faid Bill, as it was then drawn: After which the Bill passed into a Law, and therein are contained the several Clauses herein after mentioned, (viz.) " **Provided** always, and it is hereby **Declared and Enacted** by the Authority aforesaid, that nothing herein contained shall extend, or be construed to extend, to prejudice any Right or Interest which the faid Lord Bishop of Bath and Wells, the Impropiator of the Rectory or Parsonage of St. John Baptist Parish in Glastonbury, or his Lessee, hath, have, or may have, to any Tythes which shall belong, or may accrue to them or either of them, out of the faid new Inclosures hereby to be made: **And** **that** such Impropiator, or his Lessee for the Time being, **SHALL HAVE** and receive **ALL TYTHES** of what Kind soever, of and from the faid new Inclosures, (as he is or shall be by Law intituled to have and receive, as Rector or Impropiator of the faid Parish) **Notwithstanding** any Modus or Pretence of a Modus or Composition, in any other Parts of the faid Parish, or **any Exemption whatsoever.**

Ten Acres of the Commons to be allotted for the Curate. " **AND** whereas there is but a mean and insufficient Maintenance or Provision for the Curate of the faid Parish of St. John Baptist, Be it therefore **further Enacted** by the Authority aforesaid, That a certain Part or Quantity of the faid Commons or Tracts of Land, containing Ten Acres, shall, on or before the 1st of June, 1723. be divided, allotted, set apart, and fenced, ditched, and inclosed, as and for an Augmentation or better Provision for the Curate of the faid Parish-Church of St. John Baptist in Glaston, and his Successors Curates, to be held and enjoyed in severalty by him and them for ever.

Twelve Pounds a Year further Augmentation for the Curate, to be paid out of the Tythes of the New Inclosures. **AND** it is hereby **further Enacted** by the Authority aforesaid, that the faid Bishop of Bath and Wells, the Impropiator of the Rectory or Parsonage of St. John Baptist for the Time being, or his Lessee, as the faid Bishop or Lessee shall be respectively possessed or intituled to the Tythes of the faid new Inclosures, **SHALL**, for a further **AUGMENTATION** and better **PROVISION** for the Curate of the faid Parish of St. John Baptist in Glaston, **PAY** or cause to be paid unto the Curate of the faid Parish, and his Successors, for the time being, yearly and every Year, the full Sum of Twelve Pounds of lawful **British Money**, **out of the Tythes** that shall or may arise **out of the faid New Inclosures** hereby to be made, free from all Taxes whatsoever.

In August, 1722, the Commons were divided. **THAT** in pursuance of the Act, all the faid Moors or Commons, in or about the Month of August, 1722. were divided and apportioned.

**THAT** there being several Years Arrears due of the Tythes arising out of the faid new inclosed Moors, and the Respondents utterly refusing to pay any Tythes out of their several inclosed Commons, and particularly in *South-Moor*.

About Michaelmas, 1724, Appellants Bill in the Exchequer Respondent's Answer. **THE** Appellant about *Michaelmas* 1724, exhibited his Bill in the Court of *Exchequer* against the Respondents and others, therein praying to have a Discovery and Satisfaction of and for all the Tythes of the faid new Inclosures, due from them respectively for several Years then last past: To which Bill the Respondents put in their Answer, whereby the Respondents admitted, that the Bill was at first drawn without any Clause whatsoever about Tythes; and that the Bishop hearing thereof, obstructed the passing the same: But the Respondents insisted by their said Answer, that *Southmoor* was anciently a Woody Ground, Part of the Demesnes of the late Abby of *Glastonbury* at the Time of the Dissolution thereof, consisting of a much larger Number of Acres than what is inclosed, and that the same never paid Tythes, and were still exempt from any such Payment.

Decree 14 Nov. 1728. **THE** Cause being at Issue, and Witnesses examined on both Sides, the same came on to be heard the 14th of *November* 1728, before the then Lord Chief Baron





Baron and the rest of the Barons, when the Court was pleased to order, that the Appellant's Bill should stand **DISMISSED WITH COSTS**; by which Decree of Dismission, the Appellant apprehending himself aggrieved, has humbly appealed therefrom to your Lordships, for the following, and divers other Reasons (*viz.*)

- I. **F O R** that it is apprehended, that by the exprefs Words of the Act, The Impro-  
priator, or his Lessee for the Time being, **SHALL** have and receive All Tythes  
of what Kind soever, of and from the New Inclosures intended by the said  
Act, notwithstanding any Modus or Composition, in any other Parts of the  
said Parish, **or any Exemption whatsoever**. Which last Words can be of  
no Manner of Use, in case the Inclosures in *Southmoor* are to be exempted from  
the Payment of Tythes, it being admitted by the Respondents Answer, that  
the other Two Commons ought to pay Tythes.
- II. **F O R** that by the said Act it is likewise Enacted, That a Certain Part or Quan-  
tity of the said Commons, containing Ten Acres, shall be enclosed for the better  
Provision for the Curate of the said Parish, wherein is no Distinction made in  
relation to *Southmoor*, so that the said Allotment might as well be made of Lands  
in *Southmoor*, as in either of the other Commons: Whereas if *Southmoor* had  
been exempt from the Payment of Tythes, and had not been intended to be  
subject thereto, after the Inclosures made, the Curate's Allotment ought to have  
been confined to the said other Two Commons, which were confessedly subject  
to the Payment of Tythes.
- III. **F O R** that the Impropriator and his Lessee, are expressly obliged, as they shall  
be respectively possessed or intitled to the Tythes of the said New Inclosures,  
for a better Provision for the Curate of the said Parish, to pay unto the said Cu-  
rate the Yearly Sum of Twelve Pounds free from all Taxes, **Out of the**  
**Tythes** that shall or may arise **Out of the New Inclosures**; whereby  
it seems plain, That the Act never intended to make any Distinction between  
the Commons, the Tythes of **ALL** the New Inclosures, being *equally made the*  
*Fund*, for the Payment of the said Twelve Pounds a Year.
- IV. **F O R** that in the said Act, there is an Express saving (next following the before-  
mentioned Clauses for Tythes, in respect to an Inclosure of one Hundred Acres  
made by Mr. *Strode* in said Common called *Southmoor*.) That nothing in the said  
Act should extend to prejudice his Right and Interest; which saving would have  
been equally extended to the Residue of the said *Moor*, unless the same had been  
intended to be subject to the Payment of Tythes.
- V. **F O R** That, though the Proprietors and Owners, (who have inclosed the said  
Commons) have greatly improved their own Estates, yet it appears from the  
Evidence, that the Rectory is lessened in Value thereby, for want of sufficient  
Flocks of Sheep to Manure the Arable Grounds; by Means of which, and of the  
Annual Payment of Twelve Pounds a Year to the Curate, which the Appellant  
has constantly paid, he must be a considerable loser if he is excluded from the  
Tythes arising in the Inclosures in *Southmoor*.

*Wherefore the Appellant humbly hopes that the said Decree  
shall be Reversed, or that he may have such other  
Relief as to Your Lordships shall seem meet.*

J. WILLES.  
G. EYRE.



JOHN PRAT, Esq;  
APPELLANT.

*William Hopkins, Benjamin Aldford,  
Henry Talbot, and Joseph Farmer,*  
RESPONDENTS.

## The Appellant's CASE.

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To be heard at the Bar of the House of  
Lords, on the of  
1739.





